IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8-1-2007

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA

and

THE HONOURABLE MR.JUSTICE K.MOHAN RAM

Habeas Corpus Petition No.1015 of 2006

Chithraivelu .. Petitioner

..vs..

1.State, represented by the
Secretary to Government
Prohibition & Excise Department
Fort Saint George
Chennai 600 009

2.The District Magistrate and
District Collector
Pudukkottai District @
Pudukkottai .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Habeas Corpus calling for the records of the 2nd respondent pertaining to the order made in P.D.O.No.10/2006 dated 19.9.2006 in detaining the detenu Tamil Nadu Act 14 of 1982, as Bootleger and quash the same and direct the respondents to produce the detenu, namely, Meiyar, son of Govindarasu, who is detained at the Central Prison, Trichy before this Hon'ble Court and set him at liberty.

For petitioner : Mr.O.S.Thilak Pasumpadiar
For respondents : Mr.M.Babu Muthu Meeran,
Additional Public Prosecutor

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ORDER

(Order of the Court was made by P.K.MISRA,J.)

Heard Mr.O.S.Thilak Pasumbadiar, learned counsel for the petitioner and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor for the respondents.

2. The order of detention on the allegation that the detenu is a `boot-legger' is in question.

3. The learned counsel for the petitioner has raised two contentions. The first contention raised by him is that the representation made on behalf of the detenu has not been disposed of expeditiously. We have gone through the materials on record. We find that the representation dated 9.10.2006 has been disposed of on 2.11.2006. The intervening period has been properly explained. Therefore, this contention cannot be accepted. The second contention of the petitioner is to the effect that at the time of disposal of the representation, sufficient attention has not been bestowed to the representation of the petitioner. It is stated that in the representation it has been specifically indicated that there was a discrepancy in the grounds of detention and the first information report. In the grounds of detention it has been indicated as the sample of 500 ml was taken in three white coloured bottles with the capacity of 650 ml each. Admittedly in the grounds of detention it was indicated as if 500 ml sample had been taken in a bottle of 750 ml. According to the petitioner, it amounts to non-application of mind on the part of the detaining authority. It is now stated in the counter affidavit that it was a typographical mistake in the grounds of detention in English and only 500 ml sample has been taken in a bottle of 750 ml capacity. We find that in the representation made by the petitioner it had been specifically mentioned. However, in the rejection order this aspect has been completely ignored. The subsequent clarification in the counter cannot cure the defect.

4. Law is well settled when once a representation is made on behalf of the detenu, such representation should be considered with all seriousness and proper application of mind. Since in the present case sufficient ground has been made in the representation indicating the discrepancy, it was the duty of the authority deciding the representation at that stage to apply his mind. In such view of the matter since the representation has not been disposed of by proper application of mind, we are constrained to quash the order of detention.

5. The Habeas Corpus Petition is accordingly allowed. The

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impugned order is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/
Asst.Registrar(Records)

/true copy/

Sub Asst.Registrar

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To
1.The Secretary to Government
Prohibition & Excise Department
Fort Saint George
Chennai 600 009

2.The District Magistrate and
District Collector
Pudukkottai District @
Pudukkottai

3 The Superintendent, Central Prison,
Thiruchirappalli (Duplicate for communication to Detenue)

4 The Joint Secretary to Government,
Public (Law & Order), Fort St. George,
Chennai 9.

5 The Public Prosecutor, High Court, Madras.

+1CC to MR.O.S. Thilak Pasumpadiar, Advocate S.R.No.1903

H.C.P.No.1015/2006

8.1.2007

NR(24.1.2007)
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